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PLURAL VIEWS, COMMON PURPOSE: ON HOW TO ADDRESS MORAL FAILURE BY INTERNATIONAL POLITICAL ORGANISATIONS

LYNN DOBSON

Abstract: International organisations are actors capable of bearing moral responsibilities and ought to be accountable for their failures in doing so. However, we should understand these responsibilities and respond to their failures in the light of fuller considerations about morality and the common good. The article argues that the international community should ensure victims are attended to, but also that defaulting institutions may themselves need rehabilitation for different kinds of international common purposes to be achievable. Further, the ways in which both goals are agreed and undertaken must recognise multiple perspectives, else the possibilities for durable peaceable cooperation internationally will be damaged. Even in a world of plural views, we can find sufficient proximity on matters of 'good' and 'bad' to move toward further agreement. Drawing on Braithwaite, Rawls, and Sunstein, the article argues we should search out and build on such 'islands of agreement' on wrongs in international life and on mutually respectful ways of responding to them.

Keywords: Agreement, common good, international, moral, plural

Specifying the Problem

Let us suppose that there is a class of events in international affairs with the following features. First, they provoke a widespread sense within the international public sphere that a wrong has been, or wrongs have been, done: that something regrettable has occurred, the cause of which at least in part is human action. Second, the nature of the wrong or wrongs are generally understood to be (at least in part) moral: harm has occurred, as a result of acts or omissions with respect to which attributions of moral responsibility apply.

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Third, international organisations appear to be significantly causally implicated, in particular by being the main actor(s), or being amongst the main actor(s), involved.

The aim of this paper is to explore what, should there be such instances, ought to be done, specifically in respect of the culpable institutions. I make no empirical assertions about the incidence or prevalence of events like these; indeed, the argument, being hypothetical, does not require that there actually be any. Thus, the general structure of claims developed through the course of this article should be assessed independently of judgements about how closely or otherwise international politics throws up situations conforming to my list of features. Nonetheless there are actual events (or sets or series of events) in international life sufficiently like those I have outlined to illustrate the kind of situation I have in mind. Consider the following three short scenarios:

Srebrenica

In July 1995, during the civil wars that achieved the dissolution of Yugoslavia, the municipality of Srebrenica fell to Serbian forces. In little more than a week some 8,000 unarmed Bosnian Muslim men and boys were slaughtered *en masse* and an unknown number of Bosnian Muslim women and children raped. The victims were supposedly under United Nations (UN) protection in a UN-designated 'safe area', and were attacked under the noses of the UN force mandated to protect them – 150 lightly armed Dutch troops. The instigators of the policy of so-called 'ethnic cleansing', Radovan Karadzic and Ratko Mladic, have since been indicted for war crimes by the International Tribunal for the former Yugoslavia. But the UN's Secretary-General reported to its General Assembly that the Bosnian Muslims had been 'left largely defenceless as a result of an arms embargo imposed upon it by the United Nations' – this, allied with political negotiations with the Serbs that 'amounted to appeasement' and repeated public declarations that 'we did not want to use air power against the Serbs except as a last resort' had provided the conditions allowing Srebrenica to happen (UN General Assembly 1999: 104–7). To these failings were added command and control problems, decisions that were ill-advised, failure of intelligence sharing, incomplete and inaccurate information, lack of capacity, and inflexible management in the field. The Secretary-General lay responsibility on the Security Council, the Contact Group and other Governments, the UN Secretariat, and the mission in the field, UNPROFOR and Dutchbat.

Oil-for-Food

In 1995 the UN established a programme allowing Iraq, subject to sanctions since the end of the first Gulf War, to exchange oil for food and medicines, in

hope of its meeting its nationals' humanitarian needs in a way that precluded the military rearmament of Saddam Hussein's regime. Critics charged that the programme impacted adversely on the vulnerable populations it was supposed to be helping, claims partly substantiated by a finding that much of the food imported under its aegis was unfit for human consumption. On the other hand, by the time the programme was wound up in 2003, Iraq had succeeded in using it as 'a tool of foreign policy and a sizeable source of illicit revenue' (Independent Inquiry Committee into the United Nations Oil-for-Food Programme 2005b: 4) having made over US\$1.7 billion through widespread abuse and corruption involving well over 2000 companies (including major western corporations). Noting that the Security Council, the Secretariat, and nine UN agencies were involved, a Report issued in 2005 by an independent commission chaired by Paul Volcker found UN failures with respect to leadership, the dilution of authority, evasion of personal responsibility at all levels, unfit administrative structure and personnel practices, the absence of a sufficiently strong ethic, and an absence 'too often' of competence, honesty, and accountability. A variety of other private and public actors have also come under the spotlight (Independent Inquiry Committee into the United Nations Oil-for-Food Programme 2005a).

Bhopal

On the night of December 3, 1984 a plant owned by the Union Carbide Corporation in Bhopal, a city in the state of Madhya Pradesh in India, leaked forty tons of methyl isocyanate. Overnight nearly 600,000 people suffered exposure to the toxic gas; over 20,000 have died as a result and some 120,000 victims remain seriously and chronically stricken.¹ In its 20th anniversary report into the continuing Bhopal disaster Amnesty International highlighted a slew of moral (and legal) failures leading to 'a complexity of violations of civil, political, economic and social rights for generation after generation' (Amnesty International 2004). Most blame is laid at the doors of Union Carbide, its current owner the Dow Chemical Company, and the governments of India and Madhya Pradesh. The US Government, Amnesty International suggests, could do more to ensure its nationals and registered companies fall under the rule of law and their victims obtain redress. But – and this is the point to note – the report and its recommendations also point to the contributory shortcomings of a number of international organisations: the Organisation for Economic Co-operation and Development (OECD) and International Labour Organisation (ILO) it suggests, are impotent in securing accountability by transnational corporations, and the UN Commission on Human Rights could work harder at clarifying and ensuring implementation of normative responsibilities.

Before moving on to the substance of the argument that the article is concerned with let me dispel at the outset some otherwise probable

misunderstandings. So, by ‘international public sphere’ I mean only, in a somewhat loose way, international actors and attentive publics such as state actors, international non-governmental organisations and civil society-type groups, media and academic commentators, and lay observers such as ordinary citizens. By saying that the perception of a wrong having been done must be general and widespread, I am defining the boundaries of the problem at issue so as to exclude those perceptions of a wrong that are, or could on the face of it be reasonably suspected to be, partisan. Drawing the boundary that way also screens out of the analysis those cases where controversy exists over whether there is in fact a wrong to point to (as, for example, in the disputes over whether the World Bank helps, or on the contrary harms, the developing world).

Now, though quite different from each other in many ways these three scenarios have a number of features in common. First, there is a general view – held amongst not only members of the international states system but also other parties to or observers of international life – that in each case something unintended, undesirable, and regrettable, occurred. Disagreement over the details of any such wrong accompanies widespread agreement on its existence. Secondly, in the instances given this consensus goes beyond recognising the fact of wrongness *per se* and extends into agreement that persons, or important goods, values, or interests, have been harmed, and that this is as a result of acts or omissions for which attributions of moral responsibility are appropriate. Thirdly and crucially, in each of these scenarios international organisations are implicated. Certainly each of the cases throws an unflattering light on individual persons, states and states’ organs, and private corporations (both profit-making and ‘not for profit’), and there is still evidently much work to be done on the question of the moral responsibilities of such actors and how their failures ought to be dealt with. But my particular concern in this essay will be international actors of another type – the kind of common public political organisation of which in these scenarios the OECD, the ILO, and the UN and its parts are representative examples. They are seen to have been involved in ways that invite censure, not only because individual officials may have behaved badly, but because there are systemic weaknesses or acts or omissions for which collective organs, rather than or as well as individuals, are culpable. Other kinds of actors are likely to be implicated too, and it may be that parts of the argument I shall propose are extendable to them. But I do not reflect on that here. The argument is proposed only in relation to international bodies as specified.

At present there are no common understandings around whether such breaches should be responded to or dealt with, let alone how. Yet, to have no methods for dealing with moral failure by common institutions in the international arena even proposed is hardly a satisfactory state of affairs. In particular, what objectives a response should be trying to achieve, and why those objectives are the right ones, are puzzling. This is of course both a theoretical and a practical problem. But in fact the problem is further-reaching than that: we are not simply undecided about

what the solution to it ought to be, but are unclear at a more basic and prior level about what considerations any putative solution ought to be responding to.

The International Context

My starting point is to identify the most normatively salient factors, and then indicate their implications. There are, it will be claimed, four features to take into account, and taken together they point the way forward in clarifying what objectives a response to culpable institutions ought to be aiming at.

International Organisations as Moral Actors

In considering moral faults by international political bodies one question is whether such international corporations can count as being the kind of actor to whom moral responsibilities may reasonably be attributed. Additionally, in the light of events like the three outlined and the widespread unease with the workings or decisions of public organisations they prompt, some scholars of international relations have begun to wonder whether it is possible to formulate common (i.e. international) responses, or a set of principles to guide such responses, to ‘delinquent’ international institutions. The relevant literature construes the central question as being whether organisations can be moral agents (*Ethics & International Affairs* 2001; Erskine 2003, 2004a, 2009). It is claimed that (a) if agency is not attributable to such organisations then they cannot be held to be the assignees of duties nor responsible for discharging duties nor held accountable for failures to discharge moral duties, and (b) that some corporate bodies meet core tests of agency – principally capacities of reflection, deliberation, and decision (Erskine 2001, 2004b, 2008a).

It seems clear that whether or not we want to employ the terminology of agency – with all its ambiguities and difficulties – with respect to organisations, we already act as if it made sense to consider them as corporate actors capable of formulating and executing plans with purposes that are morally infused and outcomes that can be normatively assessed – hence the breast-beating in the Reports summarised earlier. If an attribution of actorhood (as distinct from moral ‘agenthood’) along these lines is, as I suppose, sufficient to establish their liability for moral tasks and accompanying responsibilities, that is as much as we need in order to get discussion going. In specific cases, what would then stand in need of establishing would be the attribution of morality-bearing actorhood to specific organisations. Nevertheless, in effect, the possibility of such attribution is already presupposed by our enquiry. Within the hypothesis this is by stipulation. In real life, such attribution is both presupposed and brought to our attention by the indignation with which we greet outrages like Srebrenica and ask what is to be done.

Let us advert to a famous essay, 'Freedom and Resentment' (Strawson 1962, 1982). In it Strawson notes that someone may cause us to suffer pain or enjoy benefit, but it will only fuel resentment or indignation or gratitude where we think it goes along with certain attitudes or intentions towards us held by that someone. Vicariously, these feelings are generalisable beyond our own personal experience, so that where a third party is done good or ill by another in ways signalling certain attitudes (perhaps about the third-party specifically or about ways of treating people in general) we feel moral approval or moral indignation. It is our having these feelings, vicariously or otherwise, that alerts us to the possibility that a moral breach may have occurred. Strawson's point is that the catalyst for certain kinds of moral judgements to come into play is not the harm or benefit *simpliciter*, but the stance that it implies its perpetrator takes towards whoever is harmed (or benefited). When these morally reactive emotions arise, we are viewing ourselves and the putative culprit as participants in a joint moral community, one in which intentions and the feelings to which they give rise are mutually understood and in which neither party is placed beyond the reach of moral expectation. Registering these reactions does not conclude matters, of course, since we will still need to investigate and employ rational evaluation to see if the moral disapproval we feel in response to an act is well-founded and appropriately directed.

In the sorts of cases in international politics I have outlined, we react with the kinds of moral indignation and outrage of which Strawson reminds us. On these occasions it is not just that we recognise that harm has been done, but we feel it ought not to have been done, and without the wrong kinds of attitudes or inattention or intention, it would not have occurred. Where an event in international politics meeting with widespread repugnance occurs, we should take this as a *prima facie* case of an act or omission for which the actor, should their fault be confirmed on fuller examination, ought to be held morally accountable. While therefore it may be true that it is difficult to assign duties to international organisations and hold them accountable for fulfilling them, the difficulties seem to be rather about practicalities than about the principles of attribution.

International Organisations as Multilateral Conglomerates

International organisations are corporations of corporations. Internally, they may be made up of all sorts of relatively discrete bureaucracies. But in thinking about the attribution of responsibilities the key relationship is that between the corporate bodies and the members composing them. Now, there are some well-known bones of contention here to do with structure and agency, and individual and collective, to get out of the way. For example, if collective subjects like the UN Security Council are no more than the sum of their parts, as some might wish to claim, holding the corporate body responsible for a moral failure may be

no advance on holding each of its members individually responsible. If common institutions such as the EU Commission are no more than the instruments of constituent powers, as some might wish to claim, then holding such bodies responsible for a moral failure may similarly be no advance on holding their political masters to account. There is of course something to these objections: political actors and powers can, and there are well-founded suspicions that they do, exploit the alibis and the aliases that acting together opens up to them. Still, conceptually speaking corporate bodies are more than, and not reducible to, the sum of their parts – that is precisely what is indicated by our choosing words like ‘corporate’ when we might instead have said ‘aggregate’. Equally they are not independent of those parts, and indeed the parts – if they are themselves actors capable of formulating wills – may individually or collectively exert strong constraints on the autonomy of both types of corporate body. In aiming to discover patterns of responsibility for particular morally flawed outcomes in the context of international institutionalisation, methodological dogmatism on questions of structure and agency, individual and collective, is almost certainly not the best starting point.

Two things are of vital importance for our purposes. First, international organisations are either conglomerates of political entities – sovereign member states – from which their authorisation is entirely derived, and which are themselves (formally, at least) the authorised representatives of their populations; or they are separate bodies created and maintained by such sovereigns and endowed by them with discretion and authority to act. Insofar as international organisations wield authority it is delegated. While they have (sometimes extensive) capacities for reflection, deliberation, and the unification and execution of will, those capacities stretch no further than the limits of the space allowed to them by their members, the *pouvoir constituant*s. As a result both types of organisation, even if they are powerful bodies enjoying significant opportunities for political entrepreneurship, lack recourse to an independent or *sui generis* source of authorisation. Their authority is derived from and dependent (in the final instance) on that of their members. Second, and further, this constitutive authority is structurally polycentric. The component members of multilateral conglomerates are, with respect to each other, anarchical. They are formal equals, they are not ordered in a formal hierarchy, and there exists no superordinate body of authority to which they must defer.

Common Good

We began from the notion of a common recognition of wrong, opening up the possibility of widespread agreement on ‘the bad’. As well as this, most observers would likely agree that in international life responsibilities, rights, and duties are unassigned or under-assigned, and may be inchoate, ill-defined,

and contested, and that authority to investigate and remedy harms is dispersed, unavailable, or ambiguous. Adverting to Strawson's insight, that many different kinds of international observer can share or converge on substantive 'bads' and instrumental shortcomings at least implies their opposites – the existence of widespread if shallow ideas of 'common good', and of procedures consistent with it. Indeed, I would go further and contend that part of the reason why international organisations' failures to uphold their moral responsibilities provoke in us the morally reactive emotions identified by Strawson is that as a class those institutions' justifications appeal ultimately to their contribution to 'good'. It provides what most of us unreflectively take to be the strongest rationale for such organisations. By this I do not mean to imply that the international community has a shared conception of 'the Good' in some comprehensive sense of which either the universe of international institutions, or any particular institution, is constitutive. Rather, as intermediary institutions international organisations are expected to be other-regarding more than they are self-regarding, and often to serve extensive, even global, constituencies. Taken in the round and over the longer term, international organisations both individually and collectively are presumed to make a net contribution to human well-being. (This presumption can be overridden by evidence to the contrary and sometimes is.) That is why their failures are peculiarly disturbing: we expect better of the UN than we do from the Karadzics and Mladics of this world.

If not a comprehensive conception of the good life, then to what good(s) do international institutions conduce? To begin with, we have strong reasons to suppose that though formally anarchic, international life and international politics are in actuality marked by widely understood and largely accepted rules and norms that import predictability and stability. As Bull wrote, the international system comprises a common perception of interests served by enduring structures of co-existence and cooperation, sets of rules to that end, institutions to facilitate exchanges, and conceptions of secular relationships conducted (formally at least) on the basis of equality and reciprocity (Bull 1984). Indeed it is precisely their departure from these customary ways of doing things in international society that makes actors such as 'rogue states' so disturbing to other international actors (as their name suggests) and shows just how deeply the everyday tacit dependence of international actors on structures of norms and expectations in international life is rooted. That is neither to say that such norms are always adhered to, nor that where they are adhered to, actors adhere to them for the same reasons, or for reasons that can be given strong moral justification. But it does show that actors' behaviour is not chaotic but customarily patterned and somewhat predictable. In other words, it demonstrates that actors' behaviour is rule-governed. Moreover, it shows that these patterns of action and interaction are often supported by explicit mutual understandings about how actors ought and ought not to interact, even when the 'ought' is prudential rather than strictly moral.

International political life is one in which, whether they like it or not, international actors are neighbours. And if conditions tolerable for human lives are to be met, then over the long run neighbours, as Kant saw, ought to cooperate, at the very least in order to agree mutually satisfactory terms of relationship and rules of engagement (Kant 1965, 1991; Waldron 1993: 28). In the absence of even minimal cooperation over rules and norms, conflict would be not only an ever-present possibility but, more importantly, could only be resolved by force. Where actors resist this knowledge and what it implies, we are in a Hobbesian state of war of each against all. Where actors are rational, on the other hand, in being able to comprehend the Kantian proposition and willing to act on it, they will be motivated to try to arrive at common understandings about sets of rules and norms to govern their interactions. Kant's moral law and Bull's international society are not the same, but they are linked. International institutions are not only constituents of a society of customary norms, but are also at the same time located in a moral universe. I don't mean this as a strong claim about the force, the similarity, or the ubiquity of actors' ethical commitments. (Indeed, shortly we will get on to a discussion about how to formulate action-guiding norms under conditions of deep dissimilarity in moral perspective.) It is merely to claim that just as international actors are compelled to live together in the natural world, so too they are compelled to co-exist in a moral universe, where each will form and hold moral and ethical expectations of each of the others (although they are unlikely to hold the same set of expectations) even if the expectation is of amoral behaviour. And in turn that implies that actors cannot be indifferent to breaches of norms, and are obliged, as Kant saw, to find a way of reconciling their different perspectives, despite and because of the difference in perspective, at least so as to allow them to co-exist tolerably in the future. Both in theory and in practice, then, it seems that actors' perceptions of mutual interests in peaceful co-existence motivate agreement-seeking norms. Given this, there is some basis for common attributions of right and wrong.

Third, actors can agree that specific international organisations serve common purposes, for which they have been established, and in pursuing the goals that the purposes imply also serve a common good. (Here of course it is important to distinguish a good common to the organisation's constituents from a general good, since they may or may not be aligned.) International actors and observers need not agree in detail on what that common good consists in; they need not see any particular institution as either constitutive of or instrumental to some shared comprehensive conception of the good life or the good society. All I suggest here is the possibility of a shared acknowledgement that, broadly speaking, the relevant institution serves some limited purpose (or set of purposes) or aims at some specific objective (or set of objectives) that is valuable to its members while not harming others, or that is (or could be made capable of being) worthy of general affirmation and support. In this third instance the good is the purpose for which the organisation exists, while in the previous two instances discussed

the value resides in interaction as such and the favourable circumstances (chiefly predictability) that it makes possible. The distinction is somewhat like that made by Oakeshott between 'enterprise' and 'civil' association: in the former persons are related in virtue of their common aim, but in the latter by nothing beyond the terms of association itself (Oakeshott 1975).

Substantive purposes pursued by international organisations may be described as 'good' in a more colloquial sense, too, because activities we could loosely think of as delivering humanitarian values are often core purposes of international institutions. Even where they are not, such organisations may still provide goods vital for the well-being of insecure or distressed populations such as frameworks for cooperation, opportunities for monitoring, stability and order. Thus as well as right and wrong, there is also some basis for common attributions of good and bad.

International Interaction and Pluralism

However, a widespread and general sense that something has (morally speaking) gone wrong frequently fails to be accompanied by a common sense of what the fault consists in, or how it should be responded to. In international life we are sometimes confronted by events that are widely perceived as morally wrong. Usually, from our particular perspective, we are clear why they are wrong. Usually, from our particular perspective, we do not take the trouble to discover whether others find them wrong in exactly the same ways that we do; and from their particular standpoints, others do not query whether we find these events unacceptable in quite the way they do. We, and they, do not trouble to do this because it rarely occurs to us or to them that there may be a wide range of reasons for finding an action reprehensible, and normative emphases may be variously placed. Since we are all in concordance on the attribution of blameworthiness, we all usually take the underlying account of why and how the event in question is wrong to be self-evident. On enquiry, parties may well find they disagree over what type of wrong it is, or what the wrong consists in, or, where a situation manifests a number of different wrongs, which of them is worst. In the Oil-for-Food scandal, for example, commentators from Arabic countries tended to stress the damage caused by unreliable supply and poor quality of food and medicines to vulnerable sectors of the Iraqi population, whereas US commentators tended to stress the damage done by bribery to ethical and professional norms in public administration and business life. Parties may dissent over the extent of the fault, or its significance, or who is to blame – as well as why they are to blame, or how much they are to blame – or even who its victims are (or why they are victims, or how badly they have been harmed).

As discussed, in international society we assume, for good reasons, a set of diverse actors recognising the need to subsist together now and in the

future within a framework of common and mutually-held expectations about their interactions, and with adequate motivation to find agreement where possible. However, such actors do not all adhere to the same substantive moral theory. On the contrary, the international context is one of sociological and ethical pluralism. International actors' subscribing to a framework of mutually satisfactory norms and recognition of each other as morally liable entities, even where such norms express value, is not founded on or motivated by a particular shared moral tradition or overarching conception of the right or the good. We can presume no convergence on a coherent foundational moral theory and there are practical obstacles – as well, probably, as normative tensions – to achieving such concurrence. International society is not riven with dissensus, but the opportunities for consensus are neither abundant nor obvious. Even where the assertion of wrongs done might secure broad agreement, therefore, their contents render them ill-suited to motivate common agreement on what action should follow. Indeed, the more that cases coming to attention are examined, the more opportunities for contestation it seems they are likely to present, and the greater the likelihood of disagreement about them amongst the larger international constituency. One possible result of this is inaction: when there is no agreement on how to react, it is so much easier not to. Another is action by a part of the international community that fails to command the assent of much of the rest of it, or worse, wantonly heightens mistrust and causes antagonism within international opinion.

Implications for Reasoning

How do these four contextual characteristics (moral actorhood, multilateralism, common good, and socio-ethical pluralism) direct our thinking on the problem in point? First, the presumption that aside from the moral failure under examination an organisation is a force for the common good speaks against too-hasty a move to 'punish' it. The notion of punishing international organisations is odd, but we can see how it might be done. Punishment involves harms to interests. So to punish such bodies, institutional interests that could be harmed would have to be found. In respect of political institutions, the literature developed for the analysis of political control (over regulatory authority especially) postulates corporate interests, too: in self-preservation, obviously, but also the maximisation of budgets (Niskanen 1973), of managerial discretion (Migué and Belanger 1974), and of prestige (Chant and Acheson 1972). In broader terms, we might refer to survival, power, and freedom (or perhaps Hobbes's motivators – security, material gain, and glory). These values transcend any particular cohort of officials and endure over time, so they may properly be seen as the institution's interests rather than (or as well as) those of its officials. If a punitive response to an international organisation's moral infraction were wanted, it may be

practically possible to apply punishment through the infliction of one or more harms to that institution's vital interests by striking at existing gains or capacities for further gains along one or more of these dimensions. For example, the defaulting institution's scope, status, and resources might be diminished.

But it is one thing to suggest it could be done, and quite another to claim that it should be done. Why, then, might we hesitate? One reason for caution is that, as noted, international organisations are not ends in themselves, citizens of Kant's kingdom of ends. On the contrary, they are intermediaries between such citizens. The nature of such international institutions means not only that they may have many third-party victims, but that they may also have many third-party beneficiaries. To punish an institution may thus result in the harm falling also – and perhaps, given their circumstances, much more grievously – on those innocents whom it serves. Here, it seems, we must contemplate the possibility that the infliction of punishment on an international institution would bring about virtue-defeating consequences.

Multilateralism under conditions of anarchy matters because it shifts the burden decisively toward persuasion. It does so because in these circumstances there is no 'über'-sovereign able to make its will prevail with respect to a particular organisation, and no power or coalition of powers can force their will indefinitely on others without seriously corrupting commitment to the relevant institution. If an institution is, on balance, conducing to the common good, then its continued existence, stability, and powers to continue doing good ought – *prima facie* – to be assured. This lays on states the duties to, broadly, do what is required to support it, and refrain from those actions that would undermine it. (Such duties are of course defeasible.) Where members treat each other with mutual respect in deciding on common action within or with regard to a shared institution, they help to sustain the institution. Where members fail to accommodate each other's views satisfactorily, they risk damaging its prospects. There may be times when to do so is a price worth paying, but members should keep in mind that it will be paid by others – perhaps tens of millions of others – as well as themselves. Further, the way associates to an international organisation treat each other will impact on their relationships in the international community more generally and feed into the prospects for future cooperation and the possibilities for, and of, future virtue-serving institutions.

What all this amounts to is that in attempting to respond to moral disasters such as Srebrenica, Bhopal, and the Oil-for-Food scandal, the international community faces three sets of moral considerations. The first is the most obvious: to attend to the (probably urgent) need for repair of and restitution to victims. The second is the need to craft such responses in ways consistent with preserving what is of value or potential value in respect of the defaulting organisation. The third is to attend to both the first and second kinds of tasks in ways that enhance the possibilities for peaceable and productive relationships in international life more generally. Responses to infractions must therefore

not only acknowledge the failure as a moral failure and treat violators in a way that pays due heed to the full weight of their failure, and do so without destabilising international life or incurring further moral hazard to co-existence, but it must do these things in ways that can be affirmed by the greatest possible variety of perspectives among the international constituency. In short, responses to actions or omissions by international organisations that are widely thought of as morally delinquent need to be consistent with differing imperatives. They must recognise the moral nature of the fault, and they must also recognise the need to preserve as far as possible what is of value in the set of relationships that constitutes international society. If we want to respond adequately to the failures of responsibility of international organisations while reducing the risk of causing further wrongs or sowing the conditions for future wrongs, we must take multilateralism seriously in our theory and in our practice.

Towards an Archipelago of Agreement

How might political agreement be secured, under conditions of sociological diversity? The most celebrated answer to this posits a free-standing convergence on the right, able to co-exist alongside divergence on the good. In *Political Liberalism* and elsewhere, Rawls claimed to find the resources of a political conception of justice (i.e. his free-standing convergence on the right) in the actually-existing resources of public cultures in modern western constitutional democracies (Rawls 1993). Insofar as international society might provide an equivalent to a domestic public culture, it is doubtful that its cultural resources could extend so far as to furnish the materials for a convergence on the right to anywhere near the same extent. In his later *Law of Peoples*, Rawls tries instead to arrive at 'a particular political conception of right and justice that applies to the principles and norms of international law and practice' founded on the notion of public reason (Rawls 2001: 3–7). But public reason, as he construes it, is not a method of reaching agreement amongst sovereign equals. Instead it is a test, to be applied to the reasons offered for their actions and decisions by those who wield power to those subject to it; it is a method for justifying courses of action already decided upon by power-holders, and all it requires is that power-holders sincerely think the reasons they offer for their actions are sufficient and they reasonably think that others might reasonably accept them too (Rawls 2001: 131–7). Rawls's theory works well as a conception of right and justice by which those actors who are already committed to the particular conception of public reason he outlines can test whether the principles and norms of international law and practice are consistent with that liberal morality, but the theory places no burden on anyone to engage with others in order to craft, in common with those others, a conception of the right capable of commanding wider assent. If we are to take multilateralism seriously this approach will not do. Further, Rawls's

belief that agreement on the good is not available leads him to attempt to stabilise relationships and outcomes through securing agreement on the right. But what if agreement on the right is unavailable too?

In his discussions of legal reasoning and decision-making, Cass Sunstein notes that United States' courts are typically faced with practical cases needing resolution in the here and now, requiring 'agreements among people who have little time and limited capacities, who must find a way to live together, who believe that values are plural and diverse, and who should show respect to one another's most defining commitments (Sunstein 1994: 139; 1996). Usually, such decisions cannot appeal to basic principles, since these are subject to disagreement that may be sharp and intractable. Nor can they appeal to abstract theories, since where these are not altogether lacking among participants they too will probably be highly contested. Reaching verdicts is constrained by heterogeneity of moral and ethical reasoning and knowledge among participants, which precludes consensus on fundamental values. Pressures of time oblige decisions to be reached before competing principles and theories can be argued indefinitely. The need for participants to be able to continue to live together without conflict after the case is decided obliges decisions to be reached in ways that secure the peace after the legal war is won (precluding, amongst other things, actors attacking each other's basic commitments).

In these circumstances, Sunstein claims, decision-making systems that function well tend to move participants toward agreement on particulars using the lowest level of abstraction needed to decide the case, so that actors are enabled to reach a result without needing to know or agree on any general theory that might account for or justify it (Sunstein 1994: 143–4; 1996: 37–41). This is possible to do, because people often are convinced that something is wrong without knowing in any theoretically coherent way why it is wrong, and because people can be brought to converge on a particular outcome although they have begun from different foundational perspectives and used different routes to get there. In other words, well-functioning systems incline actors to adopt agreements that are 'incompletely theorised', as he coins it, with respect to the right or the good. Furthermore, claims Sunstein, it is a good thing that they do so. Under conditions of diversity, proximity, and the need to exclude obvious error, incompletely theorised agreements conduce to stability, cohesiveness, and reciprocity of respect. They suit a pluralistic moral universe, reduce the costs of disagreement, are open and supple enough to allow evolution, cope with limited capacities and bounded rationality, and accommodate precedents better than approaches starting from general theories (Sunstein 1994: 153–8, 1996: 41–4).

These advantages are if anything heightened once we move away from democratic forums or from settings where adherence to differing conceptions of the good are stabilised through convergence on a conception of the right. As Sunstein notes, incompletely theorised agreements may be especially valuable

and important where a consensus on the right does not hold. As we know, in the international arena neither consensus on ‘the good’ nor on ‘the right’ is available. It is also clear that certain kinds of collective decision-making in international life pose similar sorts of difficulties as are found (he claims) in courts of law in heterogeneous societies. Moreover the pressure at law for a timely practical outcome, on which all can agree from multiple diverse standpoints, which preserves potentials for peaceful co-existence among participants in the future, and which aims to rehabilitate relationships, is almost exactly analogous to the set of considerations I argued for at the end of the last Section.

There is an element to be added to Sunstein’s account, though, because in international affairs, while agreements on action will certainly tend to be incompletely theorised because the agreement on theorisation is itself incomplete or absent, agreement on interpretation of the facts is frequently incomplete too. It is not just that actors start from different underlying philosophical or religious or ethical premises and commitments that then imply different courses of action in relation to moral violations; often they have differing assessments of, for example, which actors are the most culpable. That might be because the idea of what constitutes culpability in general, or culpability in the case at hand, is not uniform among them. However, those differences are themselves not likely to be complete, and this lack of completeness in difference provides some leverage from which common policy may be constructed. Though actor *a* may not agree with actor *b* that actors *c* to *h* are the guilty parties, believing instead that actors *f* to *k* are at fault, they both agree on *f* to *h*, and it is by building on such islands of agreement – including building bridges between them – that a policy able to command wide consent may be constructed. Note, too, that in constructing agreement on a course of action in this way, actors open up additional possibilities to extend and clarify their particular understandings of ‘wrongness’, and to reframe them in ways that are mutually adaptive.

One question that hasn’t been addressed before now is how responses to organisations’ moral faults might be implemented and enforced, even supposing widespread agreement on what shape such responses should take could be stitched together. There is no single legitimate locus of authority in the international system – no sovereign of sovereigns – and the multiple sovereigns populating it apparently have difficulty even establishing what an uncontroversial common enforcement capacity might look like. Law is weak in international life. Its coverage is fragmentary and incomplete, and mostly it is ‘soft law’, in contrast to the ‘hard law’ operating within domestic jurisdictions. For these reasons reliance on more informal modes of regulation and self-regulation, at least as a first step, can help to begin the process of victims’ and organisational rehabilitation despite there being little or no infrastructure of enforcement.

John Braithwaite’s suggestion of a regulatory pyramid may help here (Braithwaite 2002). His idea is that responses to malfeasance by organisations

should start by appealing to (in this case moral) norms that they could reasonably be expected to subscribe to, and react to non-compliance by moving a stage up a pyramid of responses of increasing severity. As the institution fails to comply with expectations, so the responses escalate, until – if the top of the pyramid is reached – the institution faces the equivalent of capital punishment. As Braithwaite notes, an escalated response of this type reduces the probabilities of over-reaction and under-reaction and is likely to be viewed as legitimate and fair by all participants including the defaulter, and so is likely to be effective in changing behaviour.

As to what those initial norms might be, we can make good use of the propensity to agree on outcomes that Sunstein notes. Or we can move to the possibility of building piecemeal agreement on outcomes that I have noted. That involves deferring agreement on their underlying rationales, while adopting the Rawlsian recourse to resources already present in the common culture. But where Rawls appeals to texts, doctrines, traditions of interpretation, and similar intellectual desiderata, we can look toward widespread but everyday practices, customs, and behaviours. One incompletely theorised agreement that might be arrived at, building up from incomplete agreements, is a resolution that international organisations found delinquent should (a) restore and repair harms done as far as it is possible to do so, and (b) be rehabilitated and restored so far as possible to a place in good standing in international life. Neither of these requires common commitment to a conception of the right, nor to a conception of the good, but rather appeals to broad concepts – like repentance and restoration – prevailing across a variety of cultures, philosophical or otherwise, secular or religious, and including the major monotheisms (Al-Ghazzali 1990; Lyden 1992).

Making Amends

How could such a resolution be put into practice? A brief illustration of the sorts of measures that might fulfill requirements may help to make the general argument more vivid.

Restitution to victims for past damage must be a priority. That may imply the payment of compensation, the return of things taken from victims, or other measures to restore the status quo ante or some hypothetical equality that the culpable act or omission is held to have disrupted. Apology and explanation should accompany restitution. All of these express respect from perpetrators to victims, as does helping victims' voices be heard and showing active concern for their future well-being. Defaulting organisations should undergo penance. Self-imposed penances signal to observers that the guilty party acknowledges the significance of the damage it has helped to bring about in the past. Institutional penances might include disciplinary procedures that secure demotions, sackings, monetary fines or criminal charges against specific officials, the surrender of

areas of managerial discretion, or the loss of powers. A culpable organisation ought also to be expected to show what measures it is taking to preclude a recurrence of similar damage in the future. Internal reform to guard against similar failures of responsibility is crucial – indeed, all the penitence in the world counts for little if not accompanied by determined reforms to ensure similar failures of duty are not repeated in the future.

As for organisations re-gaining their former good standing, the assignment of blame implicitly recognises the culprit as an actor within that universe of actors of whom we might hold legitimate moral expectations, whose actions have disappointed. If an organisation was not recognised as a bearer of moral responsibilities and susceptible to ethical reasoning, then no moral resentment could be excited by its confounding such expectations. So in requiring that delinquent organisations ‘make amends’, they are acknowledged as members of a moral universe who have breached but will, it is anticipated, once again come to observe common norms. In being prepared to admit moral wrongdoing and comply with the acts required of them consequently by others, actors signal their willing conformity to the common set of understandings about acceptable behaviour that constitutes that moral universe, so showing respect for the frameworks that pattern international life as well as recognising those whom it has harmed. So, these are some of the actions the international public sphere might demand of organisations found blameworthy.

What, however, if early stages of the regulatory pyramid were to be ineffective? If a delinquent organisation showed no inclination to, or failed to, make amends? This is where the prospect of escalation to more severe responses might arise. Because international life is anarchic many of the standard responses to wrongdoing familiar in the domestic case are, in the international case, unavailable, or have undesirable unintended consequences. We might be able to imagine the imposition of equivalents to exile, ostracism or capital punishment on some international actors more readily than we can on others but by and large these equivalents are not practical possibilities. Perhaps the embargoes that constitute ‘sanctions’ in the international community, and ‘containment’ as practised in foreign policy, are the most similar measures. In international life eliminating the culprit is rarely practicable and perhaps rarely desirable, so this frequently cannot be even the last resort. Many international bodies have standing that make it practically and normatively very difficult for others to decide that they ought to be abolished. Even intermediary institutions such as international organisations, though dependent for authorisation on states, may be able to draw on sources of indirect legitimacy that lend weight to the case for their continuing existence, especially where, as noted before, their activities are vital to the important interests of third-party beneficiaries and their abolition would involve moral hazard.

In these circumstances some degree of competitive institutional pluralism might be useful. Greater functional inter-substitutability among bodies in the

international arena could allow the possibility of shifting functions vital for precarious beneficiaries and readily reassigning moral responsibilities should it be necessary to divest an organisation of its remit. As well as the merits previously mentioned Braithwaite's escalating pyramid might supply the added advantage of securing the time needed for alternative organisations to be established or prepared to take over the responsibilities stripped from the delinquent body. To return to the three cases we began with, in dealing with the failures in responsibility by those international institutions that were identified in the Bhopal, Srebrenica, and Oil-for-Food cases, we could start by requiring organisational action to make amends and return the organisations to the confidence of the international community at large (including us, its attentive publics). But we would need to be prepared to reallocate their powers and duties to others should they be unable to demonstrate effective programmes of moral renewal. Their replacements might even be entirely newly-created institutions.

Conclusion

These ideals are hardly innovative, but if what we want is an incompletely theorised agreement, they have the merit of an existing international hinterland. Notions of repentance, restitution, reform, and reconciliation are the common property of humanity at large, and although different cultures imbue them with their own distinctive references and meanings, they are not so idiosyncratic as to be unrecognisable as different versions of the same thing. Hence they require no underlying agreement on fundamental moral theory. Establishing, as an international norm, the expectation that international organisations will make amends for moral failure is a common purpose that could be converged on by multiple actors for reasons that do not need to appeal to (their varying) fundamental commitments nor (their differing) conceptions of the good or the right. Rehabilitation as outlined can be argued for from taken-for-granted existing practices, and from prudential norms contained within a variety of traditions of thought, without recourse to a grand theory or coherent set of abstract propositions. Because of this, participants in international life aiming to secure multilateral agreements on responses to delinquent institutions need not set about projecting their own particular theoretical or ethical traditions or commitments, nor need they challenge or attack others' fundamental principles. On the other hand, because ideals around moral repair and rehabilitation can be supported from a range of different standpoints, they allow space for diverse actors to hear each other's articulations of principle. And their doing so helps to support both the operation of particular organisations, and the background fabric of basic civility needed to sustain the conditions of tolerable international co-existence more generally and into the future.

Doubtless, the stance taken here will be neither as ambitious nor as muscular as many would like. Critics will object that I began by modelling a situation *à la* ideal theory but end by making a proposal that is non-ideal – in the sense of sub-optimal. Well, perhaps. But everything we know about the moral faults of international institutions ought to tell us that when it comes to responding to them the real-world choice is not between non-ideal outcomes or ideal outcomes, but instead between non-ideal outcomes or inaction. Let us conclude, as an incompletely theorised agreement, that half a loaf is better than none.

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Note

- ¹ Compiled from websites containing recent and archived material on the Bhopal disaster as well as further links: The British Broadcasting Corporation (www.bbc.co.uk/1/hi/programmes/bhopal/default.htm), the South Asia Research Institute for Policy and Development (www.sarid.net), The Bhopal Medical Appeal and Sambhavna Trust (www.bhopal.org), Greenpeace International (www.greenpeace.org).

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